

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Telephone Number Portability

CC Docket No. 95-116

COMMENTS OF BELL SOUTH

BELL SOUTH CORPORATION

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BellSouth Corporation, by counsel and on behalf of itself and its wholly owned subsidiaries ("BellSouth"), respectfully responds to the *Public Notice*¹ seeking comment on the petition for declaratory ruling filed by the Cellular Telecommunications and Internet Association ("CTIA") on May 13, 2003.² This is the second petition CTIA has filed this year asking the Commission to address various issues regarding the implementation of wireless number portability. Contrary to CTIA's requests, BellSouth urges the Commission to take the following actions: (1) refuse to apply the shortened wireless porting interval to intermodal ports; (2) allow affected carriers the flexibility to determine whether to use a service-level porting agreement or an interconnection agreement to accommodate intermodal porting; and (3) provide guidance to the industry on the unique issues surrounding number portability for Type 1 interconnection.³

¹ *Comment Sought on CTIA Petition for Declaratory Ruling on Local Number Portability Implementation Issues*, CC Docket No. 95-116, *Public Notice*, DA 03-1753 (rel. May 22, 2003) ("*Public Notice*").

² See Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association, CC Docket No. 95-116 (filed May 13, 2003) ("CTIA Petition"); Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association, CC Docket No. 95-116 (filed Jan. 23, 2003).

³ CTIA also asks the Commission to address several CMRS-specific issues allegedly affecting wireless number portability (*e.g.*, small and rural carriers' obligation to implement nationwide

I. INTRODUCTION AND SUMMARY

While BellSouth agrees that there are a number of outstanding issues that must be resolved sufficiently in advance of the implementation date for wireless number portability, BellSouth strongly objects to CTIA's repeated attempts to blame others for the current situation. CTIA insists that the Commission, the North American Numbering Council ("NANC"), and especially the wireline industry have all somehow contributed to the delay of wireless number portability. CTIA's pointed attack on the wireline industry as anticompetitive actors seeking to sabotage wireless number portability⁴ is especially egregious. Of course, this characterization conveniently ignores CTIA's tenacious efforts to either eliminate or postpone the wireless number portability obligation through multiple extension requests, forbearance petitions, and court appeals filed over the past six years.

Although BellSouth takes no position in the instant proceeding on the merits of CTIA's legal and policy challenges to the wireless number portability requirements, BellSouth does object to CTIA's constant and unfounded criticism of the wireline industry. In CTIA's version of the number portability saga, the wireless industry is merely a passive victim subject to the evil actions of wireline carriers. This assertion is preposterous. Rather than presenting the issues in a comprehensive and fair manner, CTIA chooses to fill its pages with hyperbole and baseless accusations. Accordingly, BellSouth urges the Commission to look beyond CTIA's rhetoric. As

roaming; the continued applicability of the bona fide request process). The comments herein do not address these additional CMRS-specific issues.

⁴ See, e.g., CTIA Petition at 3 ("These obstacles, none of which are new, have been raised primarily by wireline carriers . . .").

the record convincingly demonstrates, there are critical issues that compel the Commission's attention and must be resolved in a competitively neutral and timely manner.

To that end, as demonstrated more fully below, the Commission should take the following actions: (1) refuse to apply the existing wireless porting interval to intermodal ports; (2) allow affected carriers the flexibility to determine whether to use a service-level porting agreement or an interconnection agreement to accommodate intermodal porting; and (3) provide appropriate guidance on the processes and requirements for porting Type 1 numbers.

II. THE COMMISSION SHOULD NOT APPLY THE PROPOSED WIRELESS PORTING INTERVAL TO INTERMODAL PORTING

CTIA asks the Commission to adopt a porting interval "that promotes competition."⁵ To CTIA, this request really means establishing a mandated shortened interval for wireless-to-wireless porting and applying that same interval to intermodal porting. This approach should be rejected as unreasonable, costly, and anticompetitive.

Rather than requiring all ports involving wireless carriers (intramodal and intermodal) to conform to the same truncated interval as advocated by CTIA, the more appropriate solution is to allow different intervals for the different types of ports. As CTIA points out, "CMRS carriers established a goal of processing ports within two and one half hours"⁶ If the CMRS industry wants to retain this interval for ports involving only wireless carriers, it should be free to do so; however, such an interval should not be adopted for intermodal porting.

⁵ *Id.* at 7.

⁶ *Id.* (citing North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration at 10, § 3.3.3.2 (May 8, 1998) ("1st NANC Report")).

Any port involving a wireline carrier (including Type 1 porting between wireless carriers, which always involves at least one wireline carrier) should adhere to the current wireline interval of four days. As the various NANC Wireless Wireline Integration Reports indicate, this four-day interval was negotiated and reflects the time necessary to update records in the various wireline operations support systems (“OSS”) that are impacted when a number is ported.⁷ In addition, this agreed-upon timeframe was designed to account for the variations in the complex systems and processes across the wireline industry.⁸ When a wireline carrier is involved in the porting of a number, it is not uncommon for eight or more systems to be impacted.⁹ Therefore, to suggest, as CTIA does, that the established and proven wireline interval should be significantly decreased to accommodate intermodal porting ignores the technical justifications for adopting this interval in the first place.

Moreover, the porting of a number from a wireline carrier to a wireless carrier (instead of another wireline carrier) does not somehow eliminate the need for the various order and confirmation processes that enable porting. These processes remain necessary. As the 3rd NANC Report concluded, in order to shorten the interval, the industry would have to agree to automation and uniformity across all service providers.¹⁰ CTIA’s criticism of the wireline

⁷ See, e.g., 1st NANC Report at 11, § 3.3.2.5; North American Numbering Council Local Number Portability Administration Working Group 2nd Report on Wireless Wireline Integration at 7-8, § 3.3 (June 30, 1999) (“2nd NANC Report”).

⁸ 2nd NANC Report at 10, § 3.3.2.4.

⁹ *Id.* at 7-8, § 3.3.

¹⁰ CTIA Petition at 10 (citing North American Numbering Council Local Number Portability Administration Working Group 3rd Report on Wireless Wireline Integration at 13, § 3.4.1 (Sept. 30, 2000) (“3rd NANC Report”)).

industry for not undertaking these modifications ignores several critical points.¹¹ First, as the Commission is well aware, consensus was never reached on an appropriate processing interval for intermodal ports; therefore, standards and requirements were never developed to facilitate any necessary system changes. Consequently, it is disingenuous for CTIA to blame the wireline industry for not implementing network modifications in a vacuum.

Second, CTIA completely dismisses the significant costs associated with requiring carriers with networks of different sizes and comprised of different systems to undergo extensive modifications to shorten the porting interval. Moreover, any requirement that would compel LECs to incur costs to update their networks to accommodate a shorter porting interval would necessitate appropriate cost recovery.

Third, given the multiple extensions of the wireless number portability deadline and the various court challenges initiated by CTIA and its members, it is not surprising that the wireline industry has not rushed to undergo significant and costly network changes simply to achieve a reduced processing interval. The wireline industry has incurred, and continues to incur, millions of dollars in expenses to update and modify its systems in anticipation of the commencement of wireless number portability in November 2003. Imposing the wireless porting timeframe on intermodal porting would only increase the costs associated with implementing wireless number portability. And, as indicated above, the adoption of such an obligation would require the Commission to allow appropriate cost recovery.

Clearly, CTIA has failed to demonstrate the necessity of shortening the wireline porting interval to accommodate intermodal porting. One of the major reasons the wireless industry proposed a two and a half hour processing interval for wireless-to-wireless porting was “to

¹¹ See CTIA Petition at 10.

mirror current wireless business practices with the expectation that wireless-to-wireless ports will be completed within one business day.”¹² While it makes sense to continue this “model of immediate (or closer to immediate) service activation”¹³ for purely intramodal wireless ports, it would be arbitrary to impose this same paradigm on intermodal ports.

As an initial matter, the wireline industry does not operate based on the wireless industry’s principle of immediate service. As the record demonstrates and the NANC has repeatedly concluded, the complexities of the OSS systems and order processes of wireline carriers make instant porting impossible. In addition, wireline customers do not have an expectation of immediate service. Indeed, customers of any service understand that most, if not all, of their service requests cannot be accommodated instantaneously. Explaining to a customer that there is a particular waiting period to port a number will not deter the incentive to port a number. All carriers, wireless and wireline, must take responsibility for educating their end users and managing their expectations.

Thus, it would be both reasonable and appropriate for a wireless carrier (or a retail wireless dealer) to simply explain to an individual seeking to port a telephone number that it could take up to four days to complete the process. This approach accounts for the inability of the retail dealer to determine whether a number is being ported from a wireline or wireless carrier. Of course, if the port involves only wireless carriers, the reality is that the customer could have his number ported within two and a half hours. Notwithstanding this fact, that customer would have been on notice that the process could have taken longer.

¹² *Id.* at 7.

¹³ 3rd NANC Report at 4, § 1.1.

This situation is no different for a wireline customer seeking to port his number to another wireline carrier today. Despite CTIA's claims, there is no concrete evidence that the four-day interval has caused wireline customers to forego porting. Customers that choose to switch service providers typically do so because of lower prices, better service quality, or overall customer dissatisfaction with the current provider. It is highly unlikely that a four-day processing interval would dissuade a customer potentially seeking lower rates from porting his number. Clearly, customers are taking advantage of the ability to port, as is evidenced by the number of wireline end users that have ported their numbers since the commencement of portability in 1999. In BellSouth's nine-state region, approximately 2.4 million numbers have been ported away from BellSouth to competitors. On average, the quantity of numbers ported from BellSouth has doubled annually over the past five years.

Another CTIA rationale for adopting a shortened interval for intermodal porting is the alleged risk to public safety due to the "mixed service" period.¹⁴ Contrary to CTIA's assertion, a shorter processing time would exacerbate the potential 911 problems, not minimize them. As the 3rd NANC Report explains, during the "mixed service" period, calls can be placed from both the wireline and wireless phones during the porting interval; however, incoming calls are routed to one phone or the other depending upon whether a port has been activated in the Number Portability Administration Center ("NPAC"). This "mixed service" period raises issues with respect to 911 callbacks that the NANC describes in its reports;¹⁵ therefore, BellSouth will not repeat these issues here.

¹⁴ See CTIA Petition at 11-13.

¹⁵ See 2nd NANC Report at 31-32, § 6.7; 3rd NANC Report at 16-18, § 4; CTIA Petition at 11-12.

As the 3rd NANC Report concludes, “mixed service” periods are unavoidable in the absence of simultaneous disconnection of the number by the donating carrier and NPAC activation.¹⁶ As a result, the most effective approach to minimizing the public safety risk is to ensure that the information included in the various records and databases is as accurate and consistent as possible. Shortening the porting interval will not accomplish this objective. To the contrary, truncating the interval will interfere significantly with a wireline carrier’s ability to complete the requisite orders and confirmations necessary to ensure that the appropriate records and systems are updated. The accuracy of these service orders and records is essential to the completion of a successful port. A decreased interval would likely result in more erroneous orders leading to more unsuccessful ports, which, in turn, would increase the duration of the “mixed service” period. In the end, it is possible that a port that could have been accomplished in four days could wind up taking much longer, thereby prolonging the “mixed service” period. This result cannot be deemed acceptable to the Commission given the public safety implications. Thus, CTIA’s claim that a shorter porting interval will eliminate the public safety concerns surrounding intermodal porting is false and ignores the inevitable adverse consequences of trying to impose an ill-suited interval on the wireline industry.

Finally, the Commission should deny CTIA’s request to apply a shortened interval to intermodal porting because wireline CLECs would be competitively disadvantaged. If CTIA’s proposal were adopted, wireline carriers would be required to port numbers to wireless carriers within a two and a half hour timeframe, while the four-day processing interval would still apply to wireline CLECs. This outcome is not competitively neutral and would give wireless carriers an unfair advantage over wireline carriers. To avoid this competitive disparity, the Commission

¹⁶ 3rd NANC Report at 17, § 4.3.

should conclude that separate porting intervals for intramodal and intermodal porting are reasonable. It would be appropriate for purely intramodal wireless porting to comply with the proposed wireless interval of two and a half hours, while ports involving wireline carriers (intramodal wireline and intermodal) would adhere to the existing four-day interval. This approach not only satisfies the Commission's goal of competitive neutrality but also minimizes costly systems modifications.

III. THE COMMISSION SHOULD NOT MANDATE THAT ONLY A SERVICE-LEVEL PORTING AGREEMENT IS REQUIRED FOR INTERMODAL PORTING.

The Commission may not limit a LEC's ability to negotiate an interconnection agreement to accommodate number portability with a wireless provider. As an initial matter, CTIA mischaracterizes BellSouth's position on this issue. BellSouth never objected to the use of service-level porting agreements. Rather, BellSouth advocated allowing the affected carriers to determine the type of agreement that best suits their needs. If carriers conclude that a service-level porting agreement or some other agreement is mutually acceptable, they should be allowed the flexibility to enter into such an arrangement. Thus, BellSouth urges the Commission to refrain from mandating that a service-level porting agreement is the only type of agreement that can be required to accommodate intermodal porting.

As commenters, including BellSouth, demonstrated in the related proceeding to address CTIA's petition regarding rate center disparity, the Commission is not authorized to eliminate a LEC's rights and duties regarding the negotiation of interconnection agreements pursuant to

Sections 251 and 252.¹⁷ Moreover, contrary to CTIA's assertions,¹⁸ Section 332 does not trump these statutory provisions. Section 251(b)(2) explicitly requires LECs to provide number portability.¹⁹ Section 251(c) further requires LECs to negotiate in good faith in accordance with Section 252 to fulfill the duties described in Sections 251(b) and (c), which includes the duty to provide number portability.²⁰ CTIA's assertion that Section 332 somehow overrides these statutory provisions is flawed. Although Section 332 vests the Commission with authority over CMRS generally and LEC-CMRS interconnection specifically,²¹ it does not abrogate a LEC's obligation to provide number portability pursuant to Section 251 or its right to negotiate an interconnection agreement pursuant to Section 252. Sections 251 and 252 continue to govern the provision of number portability by LECs, whether intramodal or intermodal.

It is important to note that, although CTIA states that it has developed a template for a service-level porting agreement,²² it has not made this template publicly available in this proceeding or any other industry forum such as the NANC. Thus, it is just as unclear now what constitutes a service-level porting agreement as it was in January when CTIA first raised the issue. The Commission cannot mandate that all carriers be bound by the exact same agreement, the complete details of which remain unclear.

¹⁷ See BellSouth Reply Comments, CC Docket No. 95-116, at 3-4 (filed Mar. 13, 2003); Comments of SBC Communications, Inc., CC Docket No. 95-116, at 7-8 (filed Feb. 26, 2003).

¹⁸ See CTIA Petition at 18-19.

¹⁹ 47 U.S.C. § 251(b)(2).

²⁰ 47 U.S.C. § 251(c)(1).

²¹ 47 U.S.C. § 332(c).

²² CTIA Petition at 16.

Even though CTIA goes to great lengths to explain why wireless carriers should not be required to enter into interconnection agreements with wireline carriers to accomplish porting, it recognizes that “[m]any carriers already have interconnection agreements, and it is likely that some of these agreements will be amended to address number portability once the mandate goes into effect for CMRS.”²³ CTIA further states as follows: “If carriers wish to proceed in this fashion, the Commission should not prohibit it.”²⁴ This position is fully consistent with BellSouth’s proposal. Therefore, CTIA’s objections to the use of interconnection agreements lack credibility. Accordingly, rather than limit carriers to the use of service-level porting agreements to accomplish intermodal porting, the Commission should allow the affected carriers the discretion and flexibility to determine the type of agreement that best suits their needs.

IV. THE COMMISSION NEED NOT ADDRESS UNRELATED INTERCARRIER COMPENSATION ISSUES IN THIS PROCEEDING.

CTIA asks the Commission to conclude its inquiry into the rating and routing dispute between BellSouth and Sprint.²⁵ While BellSouth agrees that this issue must be resolved, the instant proceeding is not the vehicle for such resolution. Wireless number portability is a distinct and separate issue that requires the Commission’s immediate attention and prompt action. As CTIA concedes, “the dispute between Sprint and BellSouth largely concerns matters of

²³ *Id.* at 20 n.54.

²⁴ *Id.*

²⁵ *Id.* at 24-25.

intercarrier compensation, not numbering administration or number portability.”²⁶ As such, the Commission need not seek to resolve this issue in the context of the instant proceeding. A more appropriate forum would be the ongoing proceeding to address various intercarrier connection and compensation issues.²⁷

V. THE COMMISSION SHOULD ADDRESS TYPE 1 PORTING

CTIA agrees with BellSouth that the Commission should provide the necessary guidance to address issues specific to the porting of wireless telephone numbers that use a Type 1 interconnection.²⁸ In its reply comments to CTIA’s rate center disparity petition, BellSouth proposed that the Commission initiate a separate proceeding to seek input on the various issues surrounding intermodal porting, including the porting of Type 1 numbers.²⁹ As BellSouth explained, the industry has experienced difficulty reaching consensus on the processes and requirements for coordinating service orders and developing interfaces to accommodate Type 1 porting.³⁰ Although CTIA objects to a separate rulemaking to consider this issue, it does properly recognize that Commission input and direction are essential. Given the host of outstanding issues surrounding intermodal porting, BellSouth continues to believe it wise to establish a separate rulemaking for intermodal porting. This approach would enable the

²⁶ *Id.* at 25.

²⁷ *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd 9610 (2001).

²⁸ CTIA Petition at 27-29.

²⁹ BellSouth Reply Comments, CC Docket No. 95-116, at 2-3 (filed Mar. 13, 2003).

³⁰ *Id.* at 3.

Commission to develop a comprehensive record on the wide range of issues specific to intermodal porting, including Type 1 porting.

VI. CONCLUSION

For all of the foregoing reasons, BellSouth urges the Commission to take the actions requested herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 13th day of June 2003 served the following parties to this action with a copy of the foregoing **COMMENTS OF BELLSOUTH** by electronic filing and/or by placing a copy of the same in the United States mail, postage prepaid, addressed to the parties listed below.

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